

Update: Criminal Procedure Monograph 2—Issuance of Search Warrants (Third Edition)

Part A—Commentary

2.8 Probable Cause Determination

C. Anticipatory Probable Cause

Insert the following case summary before subsection (D) on page 18:

Anticipatory search warrants do not violate the Fourth Amendment’s warrant clause. *United States v Grubbs*, 547 US ___, ___ (2006). The United States Supreme Court also held that the condition or event that “triggers” execution of an anticipatory search warrant need not be included in the search warrant itself.

In *Grubbs*, the defendant purchased a child pornography video from an Internet website managed by an undercover postal inspector. A postal inspection officer obtained an anticipatory search warrant conditioned on delivery of the videotape to the defendant’s residence and the defendant’s receipt of the videotape. The affidavit accompanying the warrant application stated in part:

““Execution of this search warrant will not occur unless and until the parcel has been received by a person(s) and has been physically taken into the residence[.]”” *Grubbs, supra* at ___.

The search warrant given to the defendant at the time it was executed did not include the affidavit or the language used in the affidavit to describe the “triggering” condition. The defendant argued that evidence obtained as a result of the warrant should be suppressed because the warrant was invalid for its failure to specify the condition on which the warrant’s execution was based. The Court disagreed:

“The Fourth Amendment . . . specifies only two matters that must be ‘particularly describ[ed]’ in the warrant: ‘the place to be searched’ and ‘the persons or things to be seized.’ . . . [The Fourth

Amendment's] particularity requirement does not include the conditions precedent to execution of the warrant." *Id.* at ____.

Part A—Commentary

2.14 Other Exceptions Applicable to Search Warrants

F. Consent

Insert the following text after the second paragraph on page 34:

A warrantless search of a shared dwelling conducted pursuant to the consent of one co-occupant when a second co-occupant is present and expressly refuses to consent to the search is unreasonable and invalid as to the co-occupant who refused consent. *Georgia v Randolph*, 547 US ___, ___ (2006).